IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 291 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESHKUMAR SOMENDRA MITTAL

Versus

ASHWINA DINESHKUMAR MITTAL

Appearance:

1. Appeal from Order No. 291 of 1995

MR BB NAIK for Petitioner No. 1

MR UNMESH D SHUKLA for Respondent No. 1-3

MR SN SHELAT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 11/03/2004

ORAL JUDGEMENT

This Appeal From Order is filed against the order dated 22.12.1994 passed by the learned Chamber Judge,

City Civil Court, Ahmedabad below applications Exh. 6 & 23 in Civil Suit No. 4085/1994 whereby the learned Chamber Judge has partly allowed the application Exh.6 and interim maintenance was allowed to the present respondent No.1 and her two minor children to the tune of Rs. 10,000/- per month and the present appellant was directed to pay such maintenance by depositing the same in the Court on or before 10th day of each Calendar month. As far as the application Exh.23 is concerned, the learned Trial Judge has directed the present appellant to provide residential accommodation to the present respondent in form of a Flat and if the Flat is hired, than the tenancy rights thereof shall be of the plaintiff and if it is purchased, it shall be purchased in the name of the present respondent.

2. It is the case of the appellant that present respondents have filed Civil Suit No. 4085 of 1994 in the Court of City Civil Judge, Ahmedabad praying for a decree or an order directing the present appellant to pay Rs. 20,000/- per month by way of interim maintenance to the respondents. In the said suit, the respondents have also filed two applications being Exh. 6 & 23 for interim orders. In application Exh. 6, it was prayed by the respondents that the present appellant may be directed to pay Rs. 20,000/- per month to the respondents by way of interim maintenance pending the hearing and final disposal of the suit and also interim injunction restraining the present appellant, his agents, servants, representatives, etc., from transferring or parting with the possession or creating any charge, encumbrance or licence in respect of the properties described in the Schedule annexed to the plaint. In application Exh. 23, it was prayed by the respondents that the present appellant will be restrained from entering Flat situated at N-153, Virundavan Vihar Flats, Nr. Dharnidhar Derasar, Paldi, Ahmedabad.

3. The said applications were heard by the learned Trial Judge and by his common order dated 31.12.1994 disposed of the said applications.

4. It is these orders which are under challenge in the present Appeal from Order.

5. The present appellant has moved Civil Application No. 2203 of 1995 for stay against the operation, implementation and execution of the impugned orders. While disposing of the said application on 16.10.1995, this Court (Coram :- Late Shri S.D. Shah, J.) has modified the orders passed by the learned Trial Judge to

some extent. This Court has observed that there shall be stay of the order passed by the trial court directing the present appellant to pay a sum of Rs. 10,000/- per month towards maintenance on condition that the appellant will pay an amount of Rs.5,000/- per month towards maintenance from 10.08.1994 and deposit such amount in the Court by 13.11.1995. If and when such amount was deposited in this Court, the respondent - wife would be at liberty to withdraw the same. If and when such amount was deposited and withdrawn by the respondent wife and children, it was directed that the Iron sheets which were lying in the bungalow or the premises of the mother of the wife 50% thereof shall be permitted to be lifted by the present appellant-husband. It was also made clear that this part of the order shall operate only if the maintenance as directed by this Court was deposited in this Court and was withdrawn by the respondents. The Court has also restrained appellant from entering into the Flat of his ownership which was solely occupied by the respondents. The Court has also passed an order to provide an alternative accommodation to the respondent and also expressed a hope that some harmony could be brought out by the children who were exclusively at present in possession and custody of the wife and arrangement to that effect was also made. The Civil Application was accordingly disposed of.

6. Thereafter, this Appeal From Order come up for hearing before this Court on certain occasions. On 5.12.2001, this Court (Coram :- S.D. Dave, J.) has passed an order recording the statement of Mr. B.B. Naik, who was initially appearing for the appellant to the effect that the appellant has taken the papers long back and his name was wrongly shown. The Court was, however, of the view that at the time of hearing of Civil Application, the Court has recorded the name of Mr. B.B. Naik for the appellant and hence, Mr. Naik was directed to send letter of his retirement by R.P.A.D. and matter was adjourned to 26.12.2001 for production of R.P.A.D. slip along with the copy of the letter. On 26.12.2001, the Court has passed another order recording the statement of Mr. Naik that the papers were already taken by the appellant and he has written letter by R.P.A.D. but he had neither received back the R.P.A.D. slip nor the cover is returned back. Hence, matter was adjourned to 09.01.2002. Thereafter, the matter was adjourned on several occasions. However, the appellant has not made any arrangement for engaging any other advocate. It, therefore, appears that the appellant is not interested in pursuing this matter. Even otherwise, it is not ascertained as to whether the conditions imposed by this

Court at the time of deciding the Civil Application have been satisfied or not. Since the suit is of 1994 and it is in the nature of matrimonial suit, it must have been disposed of by now. In any case, the interim order passed by this Court while disposing of the Civil Application if it is complied with, the said arrangement would continue till the disposal of the suit and if the said order is not complied with, the Court does not see any justification for interfering with the order passed by the learned Civil Judge.

7. This Appeal From Order is accordingly disposed of in the above terms. After the formation of Family Court, the suit must have been transferred from City Civil Court to the Family Court and if the Civil Suit is not disposed of by this time, the Family Court is hereby directed to decide the said suit as expeditiously as possible preferably within a period of six months from the date of receipt of writ from this Court or from the date of receipt of certified copy of this order, whichever is earlier.

[K.A. PUJ, J.]

#Savariya#

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